

Planning & Zoning Commission Mid-Month Meeting  
Minutes of August 19, 2010  
1st Floor North Conference Room - City Hall

**Present:** Chair Cindy Weeks; Nathaniel Cannady, Jerome Jones and Holly Shriner

**Absent:** Vice-Chairman Darryl Hart, Mark C. Brooks and Mark Sexton

**Regular Meeting - 4:00 p.m.**

Chair Weeks called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

- ? Ms. Shriner moved to approve the minutes of the July 22, 2010, meeting. This motion was seconded by Mr. Cannady and carried unanimously by a 4-0 vote.
- ? It was the consensus of the Commission to continue the discussion regarding amending Chapter 7 of the Code of Ordinances regarding sustainability bonus until the September 1, 2010 meeting.

**Agenda Items**

**(1) Ordinance amending Chapter 7 of the Code of Ordinances regarding standards for telecommunication towers**

City Attorney Bob Oast said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regulating telecommunication towers to be more consistent with changes in the federal and state laws.

Telecommunication towers and concealed telecommunication support structures are allowed as a conditional uses in most commercial zoning districts. They are prohibited in residential districts unless located on publicly-owned property supporting a non-residential use, such as schools or fire stations, where they are allowed as conditional uses.

The federal Telecommunications Act was adopted in 1996. This law essentially required local jurisdictions to permit telecommunications facilities, but gave deference to local zoning regulations. However telecommunications towers were not originally included in the first UDO adopted in 1997. At the time, wireless telecommunications was a new and burgeoning industry, and the City hired a consultant to draft and explain the new standards, which were added in 1999. The standards have changed little over the years, despite changes in the federal and State laws and available technology. While these standards largely remain relevant and appropriate, there were a few areas that required updating in order to remain consistent with the changes in the laws. Moreover, in 2007, a State law was enacted to help implement the federal law, and to provide for some consistency across local jurisdictions with respect to zoning decisions involving telecommunications towers.

The proposed UDO text amendment proposes several changes to the conditional use standards for telecommunications towers.

The changes proposed are generally designed to remove some historic barriers to towers that have, through new technology, become less objectionable. Proposed amendments include:

1. Some definitions are amended and some new ones are added to conform to State law.

2. An expedited procedure for collocated facilities is added in order to comply with State law.
3. The requirement for facilities in residential districts to be located only on publicly owned property is removed in order to comply with a prohibition in the State law. Location on publicly-owned property is encouraged, and facilities are still prohibited from locating on property that is in use for residential purposes.
4. Some other non-substantive changes are made in order to use the new terminology

Facilities locating in residential areas are still required to obtain a conditional use permit, which requires submission of a detailed application and a public hearing. Therefore, those properties continue to have the safeguards afforded by this process.

He provided the Commissioners with an amendment to Section 7-16-2 (c) (3), explaining why he has deleted the following language: "In addition, where the City Council determines that a telecommunication tower disguised as a coniferous tree is preferable alternative to a concealed telecommunication support structure,".

The SOP outlines several goals aimed at improving sustainable growth and development opportunities while ensuring that the City's regulatory environment effectively protect the citizens health, safety and welfare. Wireless telecommunications are a key element to sustainable growth and development and should be supported to the extent that it does not compromise other strategic goals.

Pros:

- ? Expands opportunity for a utility, enabling providers to meet the growing demand and provide improved service without undue impact on residential areas.
- ? Is consistent with state and federal laws

Cons:

- ? Expands the places where telecommunication towers may be located, most notably in residential areas, which has potential for conflict with the surrounding community.

Staff recommends adoption of the ordinance proposed.

In response to Mr. Cannady, City Attorney Oast said that this applies to all residential districts.

In response to Ms. Shriner, City Attorney Oast said that commons areas would be eligible for a telecommunication tower; however, Assistant Planning & Development Director said that in those circumstances we would expect the Association to review their homeowner rules and standards by which that would be evaluated.

Chair Weeks opened the public hearing at 4:15 p.m. and when no one spoke, she then closed it at 4:15 p.m.

Based on the above findings and the analysis provided in the report, Mr. Jones moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding standards for telecommunication towers including the amendment described by City Attorney Oast and a typographical error in the definition of "Search ring.". This motion was seconded by Mr. Cannady and carried unanimously by a 4-0 vote.

**(3) Ordinance amending Chapter 7 of the Code of Ordinances regarding revisions to Section 7-8-18 (Central Business District) according to the recommendation from the Downtown Master Plan**

Urban Planner Alan Glines said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding revisions to Section 7-8-18 (Central Business District) according to the recommendations of the Downtown Master Plan.

Using diagrams, Mr. Glines continued his review of the Unified Development Ordinance (UDO) amendments relating to the Central Business District (CBD) regarding requirements for buildings taller than 75 feet, external vista points and public view corridors/internal vista points.

Throughout Mr. Glines' presentation, he responded to various questions/comments from the Commissioners, including the process for reviews (which will be brought forward to the Commissioners at a future meeting).

He then explained the west Asheville Unified Development Ordinance (UDO) changes to Central Business District (CBD) Zone. He said a related, but separate amendment, an ordinance is being finalized that proposes wording changes that will apply to the west Asheville CBD areas. There are two CBD sections along Haywood Road that cover about 60 parcels totaling approximately 18 acres. He explained in detail the proposed changes recommend substantial height reduction for west Asheville, as there appears to be a general belief that very tall buildings are not appropriate along Haywood Road, and should be in the downtown CBD. Landscape buffer options are also proposed for the west Asheville CBD areas. If adopted, these could provide a useful alternative for other areas in the city where commercial zones are directly adjacent to residential zones. These concepts are still being reviewed with community stakeholders.

There are also two other isolated Central Business District zoned parcels in Biltmore Park in south Asheville. There are no development plans for these parcels and future development will likely require rezoning as a part of a new development plan, so there is no plan for modifying them.

From Staff Report: "Two years ago City Council approved a contract for planning services to develop a master plan for downtown to capture the community's goals for growth, redevelopment and continued vitality. The master plan consultants held numerous public meetings and forums to gather community input for downtown's future and the master plan was approved by City Council in May 2009. The Council directed the staff to work with stakeholder groups to prepare the changes to the UDO necessary to implement the plan recommendations, and other implementation strategies.

"With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to determine the best way to implement the recommendations in the plan. After over 20 meetings they concluded their work, and their final proposals for the Central Business District were presented to the Downtown Commission. At their June 2010 meeting, the Commission voted to approve the changes as recommended by the Committee. Other stakeholder groups continue to work on implementation elements that do not require UDO changes.

"The proposed UDO text amendment replaces the current development standards for the Central Business District (CBD) with new text and maps that reflect the goals of the Asheville Downtown Master Plan. Changes to the UDO are directly related to *Strategy 4: Shape building form to promote quality of place* and *Strategy 5: Update downtown design guidelines* from the master plan.

“As a review, the master plan introduces regulations that are form-based code rather than use-based, which focus on the basic building design elements to strengthen compatibility, ensure pedestrian orientation, and enhance the character of the skyline. The existing ordinance provides minimal direction for new building construction to ensure compatibility with neighboring properties and with downtown in general. The plan introduces concepts for the CBD that include new definitions for how height is measured, building height maximums based on location in downtown, a context transition edge adjacent to residentially zoned properties, shadow protections for park areas, new definitions for different types of parks, a street wall requirement, and building step-backs. The plan also provides new development requirements for the portions of new structures that exceed 75 feet in height including a maximum floor plate, and a limit on the length of the side of the tower portion of a building. All structures will be required to include a building cap, a primary entrance along a frontage line, and requirements for windows and other openings at the ground level and upper stories.

“The charge of the Council to the Urban Design Action Committee was to study how each master plan concept would work and realistically function in downtown, and to avoid any “unintended consequences”. With that charge, some modifications are proposed that slightly modify the master plan recommendation while maintaining the goals of the plan. The changes recommended for the master plan are summarized below:

- ? *Front Setback* – The master plan suggested averaging front setback based on street context but the Committee recommends retaining current requirements in the CBD for zero-foot setback from the right-of-way-line with limited exceptions to emphasize urban form in new construction and not allow master plan suggested setback averaging because many areas in downtown currently have a suburban form.
- ? *Measurement of Building Height* – The Committee found that there are practical difficulties with the master plan recommendation to re-measure/ re-assess the height of a building based on the grade change across the site and instead recommended to establish a single height reference point at the primary pedestrian entrance.
- ? *Height Zone Locations* – The Committee suggested adjustments to the height zone maps to reduce the locations of the tallest height zones based on compatibility with the traditional downtown core. Specifically, this reduction is in three locations – surrounding the Grove Arcade and areas below Hilliard Avenue along Church Street and Biltmore Avenue.
- ? *Applicability* – The Committee recommends applying the master plan requirements and standards only to areas zoned Central Business District and not to other zoning districts surrounding downtown, as is shown on several maps within the plan.
- ? *Context Transition Edge* – The Context Transition Edge should be adjusted to apply only to the CBD areas most sensitive to changes in height (immediately adjacent to residentially-zoned properties) and limiting the application of the height buffer to 100 feet wide (instead of 300-400 feet wide as proposed in the plan).
- ? *Shadow Restrictions* - Staff proposed adjusting the building shadow limitations for parks and open spaces to only apply to larger park areas and exclude small pocket parks, private parks and plaza spaces, with definitions created for these uses. Additionally, the Committee recommended removing the shadow limitations on historic structures because other protections could be developed for them involving input from preservation professionals.

- ? *Street Wall* – The Committee recommends maintaining the street wall concept but reworking it to simplify understanding and provide some additional options that more completely reflect the historic fabric of downtown.
- ? *Air Rights* – Staff and the Committee suggested removing the air rights option for side step-backs for upper stories of buildings because of legal concerns.
- ? *Building Cap* – The Committee included clarification of the building cap requirements to measurable standards. Subjective design recommendations as included in the master plan will be more appropriate in the Downtown Design Guidelines.
- ? *Key Pedestrian Streets* – The Committee suggested some minor modifications of the Key Pedestrian Streets map and requiring the primary pedestrian entrance to be placed on these streets if the option is available.
- ? *Tower Floorplate* – The plan recommended limiting the allowable floorplate dimension for towers over 75'. The Committee agreed with this recommendation but suggested increasing the allowable square footage to 8,000 square feet or 40% of lot area as a more practical number.

“The new amendment will include a type of form code that is similar in look to the other ordinances in the UDO but which introduces building envelope concepts and appropriate illustrations to convey the new standards. Maps will also be a part of the ordinance to easily identify boundaries for specific requirements in the ordinance.

“The Urban Design Action Committee identified a number of items that they felt should receive additional attention but which were beyond the specific scope of their work, and not essential for the implementation of the majority of the master plan recommendations. They asked that this list be presented as unfinished items that may be studied by the Downtown Commission or other appropriate groups:

1. View Corridors to be reviewed again for specific locations
2. External Vista Points (“Vista Trail”) development providing vistas into downtown
3. Expansion of the CBD along Ashland and Biltmore Avenues
4. Incentives or trade-offs for new parks, green features, etc.
5. Shadow Impacts on sunlight-dependant historic resources or sunlight-dependant “green” features
6. Transfer of Development Right possibilities
7. Protection for historic structures

“The wording amendment being considered is in direct support of the Asheville Downtown Master Plan adopted by City Council on May 26, 2010 (Resolution 09-102). The wording amendment represents the implementation of Strategies 4 and 5 focusing on the character and scale of the built environment. Some minor changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved. The adoption of the wording amendment is also in alignment with the goals of the Strategic Plan 2010-11 which emphasize fiscal responsibility by implementing an approved master plan. The plan has represented a strong partnership with supporters and stakeholders of downtown who were heavily involved in developing the strategies in the master plan and continue to meet to implement the plan.

Pros:

- ? Implements a community developed master plan.
- ? Provides a recommended form-code framework for designing new structures.

- ? Assures adequate air and light at the sidewalk level and promotes compatibility with the existing historic context.
- ? Encourages views between tall buildings and enhances the skyline vistas of downtown.
- ? Improves the compatibility for the two areas of Central Business District zoned property located along Haywood Road in west Asheville with the single-family neighborhoods that adjoin that property.

Cons:

- ? The code is more complex and may be difficult to explain and understand for the layman.
- ? Developable area per lot is reduced above the height of 75 feet (may be considered a pro).
- ? Outcomes of the new ordinance may not be fully understood until new developments are proposed.

"The Urban Design Action Committee endorsed the wording amendment and sent it forward to the Downtown Commission for consideration. The Downtown Commission after adjustments to the height map voted to approve the amendment on June 10, 2010, and recommend it moving forward to the Planning and Zoning Commission.

"This proposal has also been shared with interested stakeholders along Haywood Road, and concepts were reviewed with the Coalition of Asheville Neighborhoods (CAN).

"The CBD related ordinances if voted for approval by the Planning and Zoning Commission are expected to move forward to the Planning and Economic Development subcommittee of City Council beginning and September. Consideration of the ordinances by City Council is expected in October.

"The Planning and Development Department staff recommends approval of this wording amendment."

Chair Weeks opened the public hearing at 4:50 p.m.

Ms. Patsy Brison, attorney representing a property owner in the CBD, raised authority, procedural and context questions. She asked the Commissioners to delay voting on this ordinance until her concerns have been addressed.

Chair Weeks closed the public hearing at 4:58 p.m.

Assistant Planning & Development Director Shannon Tuch said that staff would need a short time to review the questions raised by Ms. Brison since this is the first time staff has heard those questions. Mr. Glines responded as best he could to some of the concerns raised.

In response to Chair Weeks, Ms. Tuch said that since staff will be bringing the review process ordinance to the Commissioners on September 1, she felt it would be appropriate to delay voting on this matter until then, while giving staff time to review the comments made by Ms. Brison.

Mr. Cannady moved to continue consideration of the ordinance amending development standards for the Central Business District until September 1, 2010. This motion was seconded by Mr. Jones and carried unanimously by a 4-0 vote.

### **Other Business**

Chair Weeks announced the next meeting would be held on September 1, 2010, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

### **Adjournment**

At 5:10 p.m., Ms. Shriner moved to adjourn the meeting. This motion was seconded by Mr. Jones and carried unanimously by 4-0 vote.